



EUROPEAN COMMISSION

PRESS RELEASE

Brussels, 27 January 2014

International Holocaust Remembrance Day: Commission calls on Member States to criminalise denial of crimes against humanity

Against the backdrop of International Holocaust Remembrance Day, a new report published today finds most EU Member States have not yet correctly implemented EU rules designed to tackle racist and xenophobic hate crimes. Member States unanimously adopted the [2008 Framework Decision on combating racism and xenophobia](#) through criminal law, yet national laws in a number of countries remain inadequate. In particular, national provisions against denial, condoning or grossly trivialising certain crimes – such as crimes against humanity – remain inadequate in 20 Member States.

Vice-President Viviane Reding, the EU's Justice Commissioner, in a speech on the occasion of the International Holocaust Remembrance Day, said: *"Today, we have achieved peace between nations in the European Union. Yet another challenge remains: to continue the quest for tolerance within our own societies. Nobody should ever have to experience hate speech or hate crime. So today I am calling on all EU Member States to take action to fully transpose the EU Framework Decision and make sure it is applied on the ground."*

The Commission will engage in bilateral dialogues with Member States during 2014 with a view to ensuring full and correct transposition of the Framework Decision into national law, giving due consideration to the Charter of Fundamental Rights and, in particular, to freedom of expression and association.

The EU Framework Decision aims to combat in particular racist and xenophobic hate speech and hate crime, and requires Member States to define as criminal offences the public incitement to violence or hatred on grounds of race, colour, religion, descent or national or ethnic origin.

Main findings of today's implementation report:

While all Member States have informed the Commission of their measures to comply with the Framework Decision, today's implementation report finds that a number of countries have not fully and/or correctly transposed all provisions, namely in relation to the offences of denying, condoning and grossly trivialising certain crimes.

Most Member States have provisions on incitement to racist and xenophobic violence and hatred, but these do not always seem to fully transpose the offences covered by the Framework Decision. Gaps have also been observed in relation to the racist and xenophobic motivation of crimes, the liability of legal persons and jurisdiction.

Next steps:

The Commission does not currently have the powers to launch infringement proceedings under Article 258 TFEU with regard to Framework Decisions adopted prior to the entry into force of the Treaty of Lisbon (see Article 10(1) of Protocol No 36 to the Treaties). As of 1 December 2014, the Commission will be able to launch infringement proceedings. Today's report thus gives an overview of where further work by Member States is required to align national legislation.

The Commission will not, however, ever intervene in individual cases of hate speech or hate crime. It is for national courts to determine whether a specific case represents incitement to racist or xenophobic violence or hatred, according to the circumstances and context of each situation. The Commission will only verify the transposition of the general rules into national law.

Background

Council Framework Decision [2008/913/JHA](#) is an instrument to combat racism and xenophobia by means of criminal law. It defines a common criminal law approach to certain forms of racism and xenophobia, namely with regard to racist and xenophobic hate speech and hate crime.

As regards '**hate speech**', Member States must ensure that the following intentional conduct is punishable when directed against a group of persons or a member of such a group defined by reference to race, colour, religion, descent or national or ethnic origin and when the conduct is carried out in a manner likely to incite violence or hatred against such a group or one or more of its members:

- publicly inciting to violence or hatred, including by public dissemination or distribution of tracts, pictures or other material;
- publicly condoning, denying or grossly trivialising crimes of genocide, crimes against humanity and war crimes as defined in the Statute of the International Criminal Court; and the crimes committed by the major war criminals of the European Axis countries, as defined in the Charter of the International Military Tribunal of 1945.

With regard to '**hate crime**', Member States must ensure that racist and xenophobic motivation is considered as an aggravating circumstance, or alternatively that such motivation may be taken into account by the courts in determining the applicable penalties.

The Framework decision addresses **victims** by establishing that Member States must ensure that investigations into or prosecution of hate speech offences are not dependent on a report or an accusation made by the victim, at least in the most serious cases.

The law includes jurisdictional rules intended to fight against **online hate speech** (one of the most prevalent ways of manifesting racist and xenophobic attitudes). When establishing jurisdiction over conduct committed within their territory, Member States must ensure that their jurisdiction extends to cases where the conduct is committed through an information system, and the offender or materials hosted in that system are in its territory.

This is the first implementation report on Framework Decision 2008/913/JHA. It assesses the extent to which Member States have implemented all provisions of the Framework Decision. It is based on the transposition measures notified by Member States and technical information requested from them by the Commission during its analysis (including national case law, preparatory work and guidelines), as well as on information gathered from five governmental expert group meetings and a study contracted by the Commission.

More information

Report on application of the directives and annexes:

http://ec.europa.eu/justice/fundamental-rights/files/com_2014_27_en.pdf

European Commission – Racism & Xenophobia:

http://ec.europa.eu/justice/fundamental-rights/racism-xenophobia/index_en.htm

Homepage of Vice-President Viviane Reding, EU Justice Commissioner:

<http://ec.europa.eu/reding>

Follow the Vice-President on Twitter: [@VivianeRedingEU](https://twitter.com/VivianeRedingEU)

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